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ABSTRACT

Recent rulings of the United States Supreme Court and other courts have tried to maintain a balance between a free and unintimidated press and some measure of protection for individuals against libelous accusations. The language of recent rulings suggests that the courts are focusing on impartiality and objectivity in reporting as a standard of liability in libel suits; thus, individuals are held to enjoy a right to "neutral reportage." This implies a formal endorsement of journalism's unfortunate "naive empiricism." In practice, the privilege of neutral reportage serves to inhibit social inquiry and to discourage journalists in their search for truth. The privilege of neutral reportage runs counter to the needs of a community since it affords greater freedom of expression to those with power and status. (DF)

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NEWSWORTHY ACCUSATIONS AND THE PRIVILEGE OF NEUTRAL REPORTAGE

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NEWSWORTHY ACCUSATIONS AND THE PRIVILEGE OF NEUTRAL REPORTAGE

Since its 1964 ruling in New York Times v. Sullivan,[1] from which emerged what Gillmor and Barron describe as a new and distinctive "public law of libel," the Supreme Court has sought to promote and enhance a system of freedom of expression able, if not anxious, to accommodate what had once been prohibited as seditious libel.[2] In so doing the Court has afforded increasingly broad protection to expressions by the press, even at the risk of protecting untrue and at times defamatory expressions. The rationale, as Justice Brennan offered it, was rooted in "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[3] In principle, the Court ruled, to satisfy the demands of the First Amendment the press must be free to criticize the public conduct of public officials.[4] In practice this meant a more stringent burden of proof for the public official plantiff, since any effort to recover damages for a defamatory falsehood required proof of "actual malice."[5]

Unhappily, as a standard of liability the rule of actual malice remains a vague and obscure abstraction, a theoretical construct of little practical value to the journalist. For while the freedom to discuss the stewardship of public officials has a rich tradition,[6] the Court's effort to define its limits has proven problematic at best. As Justice Black complained, the Court rendered malice an "elusive, abstract concept" which provides at best "evanescent

protection."[7] Indeed, inherently the actual malice test has a serious flaw: its implementation requires access to journalists' intrapersonal complexities, their inner-most thoughts. Even with the Court's recent ruling in Herbert v. CBS,[8] which permits inquiry into the journalist's "state of mind," judges and juries must rely on the most dubious defense of all: "defendant's testimony that he published the statement in good faith and unaware of its probable falsity."[9]

Understandably, in its effort to maintain a satisfactory balance between a free and unintimidated press and what Emerson calls "some measure of protection" against unwarranted attacks upon the individual's honor, dignity, and standing in the community,[10] the Court may be well on its way to constructing a fundamentally different standard of liability, an implicit but important adjunct to the actual malice test. Rather than grappling with the cumbersome question of malicious intent, which the Court defined, in part, as a "reckless disregard" for whether a statement was false or not, the language of recent rulings suggests a new approach: was the press impartial or "objective" in its reporting?

To be sure, what may be emerging from the federal courts -- most recently the Court of Appeals -- is a clear and formal recognition of the tenents of objective reporting, an honoring of what journalists themselves have long argued is the sine qua non of "responsible" journalism. In short, from the courts' perspective responsible reporting is "objective" reporting, and as Justice Harlan reasoned in Curtis Publishing Co. v. Butts,[11] any severe departure from the "standards of press responsibility" would be sufficient cause to strip the press of its Constitutional protection. More

succinctly, the courts have come to recognize a new First Amendment right: the privilege of "neutral reportage."

"Accepted Publishing Standards"

In June 1967, in its ruling in Butts and Associated Press v. Walker, the Supreme Court put forth a test based on its view of what qualified as "accepted publishing standards," a substantially refined standard of malice applicable only to cases involving public figures.[12]

In Butts the Court ruled on an article in Saturday Evening Post, which accused Wally Butts, athletic director at the University of Georgia, of conspiring to "fix" a football game between the University of Georgia and the University of Alabama. The substance of the story was attributed to an insurance salesman, George Burnett, who said he accidently overheard a telephone conversation between Butts and the head coach of the University of Alabama. In a 5-4 decision the Court ruled in favor of Butts, finding that the Post ignored "elementary precautions"[13] and thus displayed "highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers."[14] By engaging in "sophisticated muckraking," Justice Harlan wrote, the Post had stretched the standards of responsible journalism:

> The Post writer assigned to the story was not a football expert and no attempt was made to check the story with someone knowledgeable in the sport. At trial such experts indicated that the information in the Burnett notes was either such that it would be evident to any opposing coach from game films regularly exchanged

> or valueless. Those assisting the Post writer in his investigation were already deeply involved in another libel action, based on a different article, brought against Curtis Publishing Co. by the Alabama coach and unlikely to be the source of a complete and objective investigation. The Saturday Evening Post was anxious to change its image by instituting a policy of "sophisticated muckraking," and the pressure to produce a successful expose might have induced a stretching of standards.[15]

However, the situation in Walker, the Court found, was considerably different. Involving an AP account of rioting at the University of Mississippi in 1962, the dispatches described Edwin Walker "as encouraging rioters to use violence and giving them technical advice on combating the effects of tear gas."[16] In a unanimous decision the Court ruled that the AP story was "hot news" and thus required immediate dissemination. Moreover, the dispatches under question were "internally consistent" and seemed reasonable to one familiar with Walker's prior publicized statements. 'Considering the necessity for rapid dissemination," the Court said in denying damages from the Associated Press, "nothing in this series of events gives the slightest hint of a severe departure from accepted publishing standards."[17]

The Journalist As Professional Communicator

Clearly, in Butts and Walker and in several subsequent decisions, the Court has expressed a subtle but distinct preference for a particular kind of "professionalism" among journalists; following Carey, it is a bias in favor of the journalist as "professional communicator," a commercially induced professionalism that first came into vogue in the 1890s with the rise of objectivity in journalism:

> With the rise of 'objective reporting' in the latter half

> of the 19th century, the journalist went through a process that can be fairly termed a 'conversion downwards,' a process whereby a role is deintellectualised and technicalised. Rather than an independent interpreter of events, the journalist became a reporter, a broker in symbols who mediated between audiences and institutions, particularly but not exclusively government. In this role he loses his independence and becomes part of the process of news transmission. In this role he does not principally utlise an intellectual skill as critic, interpreter and contemporary historian but a technical skill at writing, a capacity to translate the specialised language and purposes of government, science, art, medicine, finance into an idiom that can be understood by broader, more amorphous, less educated audiences.[18]

Emphasizing the importance of reliable, trustworthy, and knowledgeable sources, the Butts Court seemed to imply that when journalists select their sources carefully, their sources' statements need not be subject to conscious scrutiny. Thus a year later, in St. Amant v. Thompson, the Court ruled that a failure to investigate the the validity or truthfulness of what it reports does not in itself establish reckless conduct on the part of the press. To demonstrate actual malice, Justice White explained, there must be sufficient evidence "to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication."[19] Whether the publisher was "prudent" or "reasonable," the Court advised, are irrelevant considerations; on the contrary, the Court acknowledged, when "reckless disregard" is defined in terms of "serious doubts," the path is paved for the imprudent and complacent publisher: "It may be said that such a test puts a premium on ignorance, encouraging the irresponsible publisher not to inquire. . . ."[20]

In its decision to reverse the Maryland Court of Appeals in

1970, therefore, the Court found that the Greenbelt News Review, a small Maryland weekly, was "performing its wholly legitimate function" when it uncritically published accurate and full reports of a heated debate at a public hearing.[21] Since the Review neither truncated nor distorted the statements it reported, it did not, following Butts, depart from the standards of responsible journalism. Similarly, in three decisions in 1971,[22] the Court ruled that unless the press intentionally falsifies its reports a finding of actual malice would be Constitutionally impermissible; at times, Justice White explained in a concurring opinion, "innocent falsehoods" must be protected to ensure access to the truth.[23]

Although actual malice is not, the Court admits, "always easy of ascertainment,"[24] through case-by-case adjudication it has come to be interpreted as a denial of the canons of impartial -- or as Justice Harlan puts it, "neutral with respect to content"[25] -- journalism. Accordingly, in Medina v. Time the Court of Appeals for the First Circuit found that Time magazine's publication of statements about an army officer's involvement in the murder of a child in Vietnam did not justify a finding of actual malice because Time itself did not assert the accuracy or truth of the facts contained in the statements.[26] That is, since Time did not truncate, distort, or falsify the statements it reported, the Court would not sustain Time's liability for the validity or truthfulness of its reports.

In sum, New York Times v. Sullivan and its progeny place a premium on fairness and impartiality. More to the point, the judiciary has seen fit to offer special protection to news media which conform to the ethic of objectivity, a trend that became manifest in no uncertain terms when the Court of Appeals for the Second Circuit

ruled recently that neutral reportage is privileged under the First Amendment.

The Privilege of Neutral Reportage

In August 1972 John C. Devlin, a reporter for the New York Times, wrote a story about five scientists accused by the National Audubon Society of "'lying' by saying that bird life in America is thriving despite the use of DDT."[27] The story, based on an article in the Society's magazine, American Birds, quoted the magazine's editor, Robert S. Arbid, Jr., as saying that higher bird-counts reflected an increase in the number of bird watchers and did not support those who argued for continued use of pesticides. "Anytime you hear a 'scientist' say the opposite," Arbid was quoted as saying, "you are in the presence of someone who is being paid to lie, or is parroting something he knows little about."[28]

In the article in American Birds the persons under attack were not named. However, in an interview with Devlin, Arbib named five prominent scientists, all of whom were identified in Devlin's story:

> Robert H. White-Stevens, formerly with American Cyanamid Company, and now in the Bureau of Conservation and Environmental Science, Rutgers University; Thomas H. Jukes, a biochemist at the University of California; Norman E. Borlaug, Nobel Prize winner; Dr. J. Gordon Edwards, a lecturer and professor of entomology at San Jose State College; and Dr. Donald A. Spencer, a retired ecologist and lecturer of the National Agricultural Chemical Association who's now a private consultant and a member of the National Audubon Society.[29]

Although Devlin wrote that "Not all of the men could be reached for comment but those who could ridiculed the accusations as 'emotion-

al,' 'hysterical,' and unfounded,"[30] only Spencer (who called the charges "almost libelous") was quoted by name. Decidedly, the focus of the Times' article was on Arbib's allegations and not on the scientists' denials.

The District Court's Ruling

Three of the five scientists -- Edwards, Jukes, and White-Stevens -- filed suit, naming as defendants the National Audubon Society, the New York Times, and two of the Society's officials. While denying punative damages, a jury awarded compensatory damages against the Times and one of the Society's officials.

On behalf of a motion for a judgment notwithstanding the verdict, the Times argued before the U.S. District Court for Southern New York that the standard of liability created in Sullivan had not been met. Although the Court agreed that the Times accurately reported and correctly quoted Arbib and the article in American Birds, the events that transpired between the time Devlin read about the DDT controversy in American Birds and the publication of his article required a denial of the motion:

> We thus have an initial publication which was not actionable in the absence of names. The reporter pushes for disclosure of the names so that he might write a story, in a newspaper with over 900,000 daily circulation, about individuals who have been called liars in one of the Society's publications. He knows from the inception that one of the scientists being called a liar is a Nobel Prize winner. He finds out as early as ten days before publication that at least two of the plantiffs are not in the employ of the pesticide industry, nor are they being paid by such manufacturers to lie. He is given extensive background material on the views of these persons. He is furnished with names of other scientists with whom he might

> check out the story. He never made any effort to consult with counsel for the Times as to possible liability if the story were published. There is no evidence that any of his superiors made such innuiry.[31]

In particular, the Court ruled that the malice test was met and the "jury was justified in finding clear and convincing proof from the evidence and the inferences to be drawn therefrom that the story of August 14 was published with reckless disregard for whether it was false or not."[32]

The Court of Appeals Ruling

In reversing the District Court's decision, the Court of Appeals for the Second Circuit took exception to the instructions to the jury, which called for a guilty verdict if Devlin was found to have "had serious doubts about the truth of the statement that appellees were paid liars, even if he did not have any doubt that he was reporting Arbib's allegations faithfully."[33] Citing several precedents,[34] the Court found that the First Amendment protects the "accurate and disinterested" reporting of newsworthy accusations. "We do not believe that the press may be required to suppress newsworthy statements merely because it has serious doubts regarding their truth."[35]

Since Devlin "in good faith elicited both sides of the story to the best of his ability," his reportage warranted Constitutional protection; for when defamatory charges are reported by one public figure against another, the Court found, the "First Amendment protects the accurate and disinterested reporting of those charges, regardless of the reporter's private views regarding their validity."[36]

Special protection is afforded to neutral reportage, the Court

said, such that the Times could not be found liable for defamation; Devlin's story was, in short, privileged under the First Amendment:

> The contours of the press's right of neutral reportage are, of course, defined by the principle that gives life to it. Literal accuracy is not a prerequisite: if we are to enjoy the blessings of a robust and unintimidated press, we must provide immunity from defamation suits where the journalist believes, reasonably and in good faith, that his report accurately conveys the charges made.[37]

On December 12, 1977 the Supreme Court declined to accept the case (No. 77-576) for review.

First Amendment Protection for Objective Reporting: Boon or Bane?

That objective reporting is well on its way to becoming a conditional privilege and a reasonable defense against defamatory falsehoods signifies a fundamental departure from a time when the press was thought of as partisan and impassioned, a champion of causes. Today, jurors and journalists seem to prefer an impartial or neutral press; to be sure, balance and fairness are more in vogue than a distinctive point of view.[38]

In the narrower context of libel law the privilege of neutral reportage may only denote a broadening of the actual malice test. But in the larger context of First Amendment theory it implies a formal endorsement for one of journalism's saddest conventions, a sanctioning of journalism's "naive empiricism."[39] For if journalists and journalism educators should be chided, as Carey suggests, for rationalizing objectivity into a "canon of professional competence and an ideology of professional responsibility,"[40] then the

courts should be taken to task for uncritically accepting this rationalization as a legitimate standard of press performance.

Specifically, the courts' interest in encouraging objective reporting raises two troublesome questions: (1) from the point of view of the judiciary, what consititues responsible journalism? and (2) what are the ideological consequences of the courts' conception of "responsible" journalism?

A Question of Responsibility

According to the Court of Appeals in Edwards, journalists are free to report the exchange of accusations between public figures even if they have "serious doubts" about their truth or validity.[41] Formally stated, under the guise of neutrality and impartiality, journalists may regard the statement "X said A" as a privileged "newsworthy accusation" even if they have little or no reason to believe "A" is true, the folly of which the Commission of Freedom of the Press warned against several decades ago when it cautioned journalists about the important though often neglected distinction between reporting the facts truthfully and reporting the truth about the facts.[42]

Following the Court's reasoning, to the extent that journalists can maintain what Tuchman calls an "aura of impartial facticity,"[43] their reportage is privileged under the First Amendment; that is, when reporters are unwilling or unable to accept responsibility for what they report their reportage is afforded special protection. "The public interest in being fully informed about controversies that often rage around sensitive issues," the Court said, "demands that the press be afforded the freedom to report such charges without assuming responsibility for them."[44] However, when the press does

assume responsibility for what it reports, the Court cautioned, it cannot rely on the privilege of neutral reportage. Paradoxically, the less responsibility the press accepts the greater its protection under the Constitution. In sum, the First Amendment protects reporters only in their role as "professional communicator": when the press operates as a neutral and disinterested forum for the comment and criticism of public figures its reportage is immune from liability, but when the press itself engages in comment and criticism its reportage is largely unprotected. Presumably, columns, editorials, and analyses of one kind or another are afforded less First Amendment protection than "objective reports" of "newsworthy accusations."

In practice, then, the privilege of neutral reportage may serve to inhibit social inquiry and discourage journalists in their search for truth. The courts' effort to promote a fair and impartial press, therefore, may prove to be inimical to a free and responsible press; for in their role as mediator journalists are most susceptible to what Phillips calls the "irredeemable flaw"[45] of objective journalism: facts can mask the truth while simultaneously putting the mark of truth on a blantantly inaccurate statement. In the final analysis, the courts' expressed preference for objective reporting is likely to bring about the demise of responsible journalism -- if by "responsibility" we mean a commitment on the part of journalists to the validity and authenticity of what they report. Harshly put, the privilege of neutral reportage may well erode the important and essential freedom to be responsible.

A Question of Ideology

Journalists are liely to feign impartiality and their stories may appear to be unbiased and value-free, but unavoidably the routines of

objective reporting -- as Tuchman puts it, the arrangement of reportorial staffs in time and space[46] -- have brought about an occupational ideology, an ideology that favors leaders and officials, the prominent and the elite, the "managers of the status quo." As professional communicators journalists have come to rely most heavily on "legitimated sources," public officials and public figures whose very credibility rests on their position or status (i.e., publicity) in society.[47] Accordingly, the Court of Appeal's decision to offer special Constitutional protection for the news media's "disinterested" coverage of "public" sources may, in the end, act as a barrier to the sort of popular debate in which a democratic press ought to be engaged. Indeed, the privilege of neutral reportage not only encourages reporters in their relationships with public sources but at the same time discourages the use of private or non-public sources.

It is a fundamental truism that popular debate depends on separating individuals from their powers and privileges in the larger society; for as Gouldner reminds us, if such powers and privileges are not defined as irrelevant to the quality of discourse, then debate itself becomes a source of societal domination.[48] The privilege of neutral reportage, reasonably interpreted, thus runs counter to the needs of a democracy, since it affords greater freedom of expression to those who have power and status; inevitably, its implementation will stifle dialogue and undermine rational discourse. At bottom, contemporary libel law in general, the privilege of neutral reportage in particular, rests on an ill-conceived distinction between "public" and "private" persons, a dichotomy Justice Brennan once dismissed as making no sense in terms of First Amendment guarantees.[49]

[1]376 U.S. 254 (1964) Also in Kenneth S. Devol, ed., Mass Media and the Supreme Court, 2d ed. (New York: Hastings House, 1976), pp. 200-208.

[2]Donald M. Gillmor and Jerome A, Barron, Mass Communication Law, 2d ed. (St. Paul: West Publishing Co., 1974), p. 234.

[3]In Devol, op. cit., p. 205.

[4]The Court soon expanded the Times doctrine to include public "figures." See Curtis Publishing Co. v. Butts and Associated Press v. Walker, 388 U.S. 130 (1967).

[5]Following Marnell, "Legal malice is a technicality: it means merely that the defendant committed the offense. Actual malice is a matter of intent and must be proved by the plantiff." Thus a jury must not only determine whether a falsehood was malicious but whether the malice was deliberate as well. See William H. Marnell, The Right to Know (New York: Seabury Press, 1973), p. 140.

[6]See Thomas I. Emerson, The System of Freedom of Expression (New York: Vintage Books, 1970), pp. 518-543.

[7]Sullivan, 376 U.S. at 297, 293, 295. Also in Gillmor and Barron, op. cit., p. 246.

[8]Herbert v. CBS, U.S.

[9]St. Amant v. Thompson, 390 U.S. 731 (1968)

[10]Thomas I. Emerson, Toward A General Theory of the First Amendment (New York: Vintage Books, 1963), p. 69.

[11]388 U.S. 130 (1967); also in Devol, op. cit., pp. 212-221.

[12]The cases were decided jointly.

[13]"The Saturday Evening Post knew that Burnett had been placed on probation in connection with bad check charges, but proceeded to publish the story on the basis of his affidavit without substantial independent support. Burnett's notes were not even viewed by any of the magazine's personnel prior to publication." Also, "No attempt was made to screen the film of the game to see if Burnett's information was accurate, and no attempt was made to find out whether Alabama had adjusted its plans after the alleged divulgence of information." In Devol, op. cit., p. 217.

[14]Ibid., p. 217.

[15]Ibid., pp. 217-218.

[16]Ibid., p. 214.

[17]Ibid., p. 218.

[18] James W. Carey, "The Communications Revolution and the Professional Communicator," in Paul Halmos, ed., "The Sociology of Mass Media Communicators," The Sociological Review, Monograph No. 13: 23-38 (January 1969).

[19] St. Amant v. Thompson, 390 U.S. 727; 1 Med.L. Rptr. 1586 at 1588.

[20] Ibid.

[21] Greenbelt Publishing Co. v. Bresler, 398 U.S. 6; 1 Med.L.Rptr. 1589 at 1592.

[22] Monitor Patriot v. Roy, 401 U.S. 265; Time v. Pape, 401 U.S. 279; Oscala Star-Banner Co. v. Damron, 401 U.S. 295.

[23] Oscala Star-Banner, 1 Med.L.Rptr. 1624 at 1627.

[24] Monitor Patriot, 1 Med.L.Rptr. 1619 at 1624.

[25] Butts, 388 U.S. at 153.

[26] Medina v. Time, 439 F.2d 1129 (1971). Other relevant lower court decisions include Griffin v. Clemow, 251 A.2d 415 (Conn.Super.1968) and Johnston v. Time, 321 F.Supp. 837 (D.C.N.C.1970).

[27] John C. Devlin, "Pesticide Spokesmen Accused of 'Lying' on Higher Bird Count," New York Times, August 14, 1972, p. 33.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Edwards v. National Audubon Society, 2 Med.L.Rptr. 1093 at 1095, 1096 (S.D.N.Y.1976).

[32] 2 Med.L.Rptr. at 1096.

[33] 2 Med.L.Rptr. 1849 at 1853 (2d Cir.1977).

[34] Time v. Pape, op. cit.; Medina v. Time, op cit.; Miami Herald v. Tornillo, 418 U.S. 241 (1974).

[35] 2 Med.L.Rptr. at 1853. Emphasis added.

[36] Ibid. Emphasis added.

[37] Ibid. at 1853-1854.

[38] See David A. Anderson, "The Selective Impact of Libel Law," Columbia Journalism Review, 14: 38 (May/June 1975).

[39]Following Phillips, by "naive empiricism" I mean the tendency on the part of the journalist to adduce facts for their own sake. See E. Barbara Phillips, "Approaches to Objectivity: Journalistic vs. Social Science Perspectives," in Strategies for Communication Research, Paul M. Hirsch, Peter V. Miller and F. Gerald Kline, eds. (Beverly Hills: Sage Publications, 1977), pp. 63-77. See also Gaye Tuchman, "Professionalism as an Agent of Legitimation," Journal of Communication, 28: 106-113 (Spring 1978).

[40]Carey, op. cit., p. 33.

[41]It is uncertain whether "serious doubts" means doubts about the veracity of the source or doubts about the validity of the source's statements. Given the former interpretation, the Edwards ruling seems plausible; given the latter, however, Edwards appears to run counter to St. Amant. See for example Dickey v. CBS, 4 Med.L.Rptr. 1353 (1978), in which the Court of Appeals for the Third Circuit declined to recognize a privilege of neutral reportage.

[42]Robert D. Leigh, ed., A Free and Responsible Press (Chicago: University of Chicago Press, 1947), p. 22.

[43]Tuchman, op. cit., p. 111.

[44]2 Med.L.Rptr. at 1853. Emphasis added.

[45]Phillips, op. cit., p. 73.

[46]Tuchman, op. cit., p. 109.

[47]On this point see Theodore L. Glasser and Thomas R. Donohue, "The Consequences of Objective Reporting: The Case of 'Redlining' in Hartford," paper presented to the Mass Communication and Society Division of the Association for Education in Journalism, Seattle, August 1978.

[48]Alvin W. Gouldner, The Dialectic of Ideology and Technology (New York: Seabury Press, 1976), p. 98.

[49]Rosenbloom v. Metromedia, 403 U.S. 29 (1971). Also in Devol, op. cit., p. 224.

Appendix

Pesticide Spokesmen Accused Of 'Lying' on Higher Bird Count

By JOHN DEVLIN

"Segments of the pesticide industry and certain 'scientist-spokesman,'" are accused in the current issue of American Birds of "lying" by saying that bird life in North America is thriving despite the use of DDT

The publication is sponsored by the National Audubon Society in collaboration with the United States Fish and Wildlife Service. The delayed current issue is devoted principally to results of the 72nd Christmas Bird Count.

The accusation against the pesticide industry and some of its spokesmen is contained in the forward by Robert S Arbid Jr., editor.

He wrote that the reason the Christmas Bird Count showed more birds, as cited by pesticide industry spokesman, was not that there were more birds these days but simply "more birders" who go out on the annual counts and thus increase the size of the totals reported.

Accused Men Named

The persons under attack were not identified in the publication.

However, Mr. Arbid said in an interview that they included Robert H. White-Stevens, formerly with American Cyanamid Company, and now in the Bureau of Conservation andEnvironmental Science, Rutgers University; Thomas H. Jukes, a biochemist at the University of California; Norman E. Borlaug, Nobel Prize winner; Dr. J. Gordon Edwards, a lecturer and professor of entomology at San Jose State College; and Dr. Donald A. Spencer, a retired ecologist and lecturer of the National Agricultural Chemical Association who's now a private consultant and a member of the National Audubon Society.

Not all of these men could be reached for comment but those who could ridiculed the accusations as "emotional," "hysterical," and unfounded, and Dr. Spencer said they were "almost libelous."

"We are well aware," Mr. Arbid wrote, "that segments of the pesticide industry and certain paid 'scientist-spokesmen' are citing Christmas Bird Count totals and other data in American Birds as proving that the bird life of North America is thriving, and that many species are actually increasing despite the widespread and condemned use of DDT and other nondegratable hydro-carbon pesticides.

"This, quite obviously, is false and misleading, a distortion of the facts for the most self-serving reasons. The truth is that many species high on the food chain, such as most bird-eating raptors and fisheaters, are suffering serious declines in numbers as a direct result of pesticide contaminations; there is now abundant evidence to prove this."

From The New York Times, August 14, 1972, p. 33.